SPECIFIC PERFORMANCE — MUTUALITY — STATUTE OF FRAUDS. — In a suit for specific performance of an oral contract for the sale of realty, the written memorandum relied on by the purchaser to take the case out of the statute of frauds was a receipt for part of the purchase price, signed by the vendor's agent. The receipt named the parties, the purchase price, and the property bought. The defence was that as the plaintiff had not signed the memorandum, the agreement was lacking in the requisite mutuality. *Held,* that specific performance should be decreed. *Hensel v. Calder* (1920, Md.) 109 Atl. 195.

This decision, in effect at least, brings the Maryland court into accord with the long line of decisions in other jurisdictions following *Hatton v. Gray* (1684) 2 Ch. Cas. 164, 1 Ames, *Cases on Equity Jurisprudence* (1904) 421; *contra, Lipscomb v. Watrous* (1894) 3 D. C. App. 1. It was formerly held that a vendor who had not signed such a memorandum could not get specific performance against a vendee who had. *Duvall v. Myers* (1850) 2 Md. Ch. 401. That case followed the rule that mutuality meant mutuality of remedy at the time the contract was made. See Fry, *Specific Performance* (5th ed. 1911) sec. 463; *Lawrenson v. Butler* (1802, Ir. Ch.) 1 Sch. & Lef. 13. But it applied the rule to facts similar to those in the instant case, which had always been regarded as an exception. See Ames, *Mutuality in Specific Performance* (1903) 3 COL. L. REV. 1, 5; see Lewis, *Specific Performance of Contracts* (1901) 49 AM. LAW REG. 559, 571. The principal case distinguishes *Duvall v. Myers, supra,* on the ground that the vendor's name did not even appear casually in the memorandum in that case. The distinction bears upon the legal question as to what form of memorandum is sufficient to satisfy the statute of frauds, rather than the equitable question of mutuality. Fry's rule has been properly criticised as overburdened with exceptions. See Langdell, *Specific Performance* (1887) 1 HARV. L. REV. 104; see COMMENT (1917) 27 YALE LAW JOURNAL, 261. Pomeroy's statement of the doctrine requires fewer: "So far as there is a principle of mutuality, it is a mutuality of remedy in equity at the time of filing the bill that is required." 5 Pomeroy, *Equity Jurisprudence* (2d ed. 1919) sec. 2191. But the most satisfactory rule of mutuality is that of Ames: "The reciprocity of remedy required . . . is simply the right (*privilege*) of one party to refuse to perform, unless performance by the other is given or assured." Ames, *Mutuality in Specific Performance, supra.* In other words, when only the defendant is bound under a contract sought to be specifically enforced, a decree will be granted, if it can be made conditional on performance by the plaintiff. It is believed that there are no exceptions to this rule. Much of the confusion as to the defence of want of mutuality arises from those cases where it is said that a contract is unenforceable where there is no mutuality of obligation. But in such cases the reason for not granting relief may be that there is no contract at all, but only an offer creating a power in the offeree. See (1917) 26 YALE LAW JOURNAL, 795; Corbin, *Offer and Acceptance* (1916) 26 *ibid.,* 169, 190; (1917) 26 *ibid.,* 802; COMMENT (1920) 29 *ibid.,* 767; (1919) 28 *ibid.,* 705.

TAXATION—PUBLIC PURPOSE—GOVERNMENT MERCHANDIZING.—The plaintiffs, taxpayers in the state of North Dakota, brought a bill for an injunction to restrain the defendants, state officers, from disbursing certain funds or issuing certain bonds in pursuance of constitutional amendments and statutes alleged to be a violation of the Fourteenth Amendment in taking property for other than public purposes. The amendments and statutes provide that the state should "engage in the business of manufacturing and marketing farm products" by establishing a warehouse, elevator, and flour mill system, and "engage in providing homes for the residents of the state" by providing a commission endowed with the power of eminent domain to acquire land on which to build homes and farmhouses to be sold at minimum rates. *Held,* that the injunction should not be granted. *Green v. Frazier* (1920, N. D.) 176 N. W. 11.

A late decision of the Supreme Court held that it was a public purpose to provide necessities for the public, and that the state legislatures and courts could best decide what were included in that term. *Jones v. City of Portland* (1917) 245 U. S. 217, 38 Sup. Ct. 112, (1918) 27 YALE LAW JOURNAL, 824, 836. The instant case represents a decidedly liberal view of "necessities." See (1918) AM. L. REV. 215. Indications are that government operation of a business will be allowed where regulation of rates and facilities would be sustained. See COMMENT (1918) 27 YALE LAW JOURNAL, 824. But operation may even precede such regulation. *Holton v. Camilla* (1910) 134 Ga. 560, 68 S. E. 472. It would seem that the concept of "necessities" might soon cover nearly all products, and that all industries might be regulated or operated as in mediaeval times. It is not easy to see what limitations will be placed on government operation, but as yet the furnishing of amusements is unauthorized. *State ex rel. Toledo v. Lynch* (1913) 88 Oh. St. 71, 102 N. E. 670. And it may be presumed that the operation must be for the general benefit rather than for a particular group or class. *Cf. Loan Association v. Topeka* (1875, U. S.) 20 Wall. 655. However, it is doubtful if the courts will insist on the curiously unsound requirement that the operation shall not be for profit. See *Jones v. Portland, supra.* The court in the instant case relies for affirmance of its decision on the promises of the Supreme Court to give great weight to the decision of the state courts on the ground that they could best judge economic conditions. *Cf. Hairston v. Danville and Western Ry.* (1908) 208 U. S. 598, 28 Sup. Ct. 331; *cf. Jones v. Portland, supra.* Consistent holdings could now allow the establishment of different economic systems in different states. Perhaps the resultant competition would be the best test of the new economic theories.

TELEGRAPHS AND TELEPHONES—MESSAGES ACCEPTED BY TELEPHONE—OPERATOR AGENT OF COMPANY AND NOT OF SENDER.—The defendant telegraph company maintained a telephone in its transmitting office for the purpose of receiving messages to be sent over its wires. Through the negligence of the operator in receiving a telegram over the telephone, a mistake was made in the initials of the addressee. The message failed to reach its destination, thereby causing damage to the plaintiff for which suit was brought. *Held,* that the plaintiff should recover, because the operator, in receiving the message over the telephone, was the agent of the telegraph company and not of the sender. *Salisbury v. Western Union* (1919, Mo. App.) 217 S. W. 551.

A telegraph company may place reasonable regulations upon the use of its service. Stipulations upon a telegraph blank that "no responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices," and that "if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender," have been held reasonable. *Collatta v. Western Union* (1920, Miss.) 83 So. 401, (1920) 29 YALE LAW JOURNAL, 697. *Ayres v. Western Union* (1901) 65 App. Div. 149, 72 N. Y. Supp. 634; *Stamey v. Western Union* (1893) 92 Ga. 613, 18 S. E. 1008. Where the sender was unable to write and requested the operator to write the message for him, it was held that the operator was acting as the agent of the sender and that the company was under no duty to pay for mistakes. *Western Union v. Jackson* (1909) 163 Ala. 9, 50 So. 316; *Western Union v. Holcomb* (1912, Tex. Civ. App.) 152 S. W. 190. Nor could the telegraph company be held when the messages were delivered orally to the operator. *Western Union v. Dozier* (1890) 67 Miss. 288, 7 So. 325. If the company has customarily undertaken to transmit messages accepted orally, however, they have been liable for any error of the operator. *Western Union v. Stevenson* (1889) 128 Pa. 442, 18 Atl. 441. Likewise, when a telegraph company maintains a telephone in its transmitting office over which it accepts messages, it